

# Exhibit C

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phone conference

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 MADELINE GRULLON, *et al.*,

4 Plaintiffs,

5 v.

23 Civ. 10388 (KPF)  
Telephonic Proceeding

6 DAVID C. BANKS, *et al.*,

7 Defendants.

8 -----x

New York, N.Y.  
December 15, 2023  
3:55 p.m.

10 Before:

11 HON. KATHERINE POLK FAILLA,

13 U.S. District Judge

14 APPEARANCES

16 BRAIN INJURY RIGHTS GROUP, LLC

Attorneys for Plaintiffs

17 BY: RORY J. BELLANTONI

18 SYLVIA HINDS-RADIX

Corporation Counsel for the City of New York

19 BY: JAIMINI AJAY VYAS

THOMAS LINDEMAN

20 JASON W. IMBIANO

Assistant Corporation Counsel

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(The Court and all parties appearing telephonically)

THE DEPUTY CLERK: Counsel, please state your name for the record, beginning with plaintiff.

MR. BELLANTONI: Good evening, your Honor. Rory Bellantoni, B-E-L-L-A-N-T-O-N-I, for the plaintiffs.

THE COURT: Sir, good afternoon, and thank you very much.

And representing the defendants this afternoon?

MR. VYAS: Good afternoon, your Honor. My name is Jaimini Vyas, and I am joined in my office with Thomas Lindeman and Jason Imbiano.

THE COURT: OK. Good afternoon to each of you as well.

We are having this conference, given its urgency, by telephone, but as a result of that and given the not great telephone equipment we have here at the federal government, I'm going to ask each of you to just be as loud and as slow as you can be.

Mr. Bellantoni, I finished a trial yesterday and I know that's not something you care about, but I immediately finished and was told that there was a need for a TRO. And I was a little bit confused because, as I understood it from the docket, this case was filed on November 28th without an application for a TRO so I'm trying to figure out what's happened between then and now that has brought about the

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1 urgency, sir.

2 MR. BELLANTONI: Your Honor, I hope you can hear me.

3 THE COURT: I can, sir.

4 MR. BELLANTONI: There have been a couple of these  
5 cases, your Honor, filed by myself on behalf of a number of  
6 students, and what happened is there have been some payments,  
7 not for these students, for others. The urgency here, is that  
8 going back from July 5 until present, when about 30 students at  
9 iBRAIN started the new school year and had pendency there,  
10 there had been no pendency payments for these 30 students for a  
11 number of months. And we were talking maybe \$4.5 million worth  
12 of payments, your Honor. Given that payments were made in some  
13 other cases, the school had some revenue. So when we brought  
14 these cases initially, there was the first part of Grullon  
15 Judge Clarke had that was seeking pendency orders to determine  
16 where pendency was, pendency at iBRAIN. That case was mooted  
17 out because the DOE admitted or conceded, through pendency  
18 orders or agreement, that the pendency for the student was at  
19 iBRAIN. That case ended.

20 Under the *Mendez* case, which is cited in our papers,  
21 the Second Circuit said when it comes to private placements,  
22 pendency is placement, not payment, you are entitled to an  
23 order for automatic placement under 1415(j) under the IDEA but  
24 payment, you can only seek automatic injunction under 1415(j)  
25 if the placement of the students are jeopardized. The DOE

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1 hadn't made payments for a number of students up until  
2 November. Some payments had been made at about that time, the  
3 23rd, the 24th, so when we filed this case the school was not  
4 in danger of either missing another payroll or closing because  
5 of nonpayment. The payment that has been made for other  
6 students that carry the school was spent on payroll. We are  
7 now at a point where there is a payroll that was supposed to be  
8 made today for the school. The DOE has conceded that iBRAIN is  
9 the pendency placement and as of right now there is \$500,000  
10 that is outstanding for these three clients in tuition only.  
11 That doesn't include transportation and nursing.  
12 Transportation and nursing would not necessarily close the  
13 school, it might affect individual services the students get,  
14 but right now one of the urgent matters is the payroll for the  
15 200-something employees at the school that, according to  
16 Mr. Mielnik in his declaration, wouldn't be made today if these  
17 payments were not made. Now --

18 THE COURT: Mr. Bellantoni, thank you. You actually  
19 have to let me get a word in edgewise from time to time, sir.

20 To begin, Mr. Bellantoni, what is the enrollment at  
21 iBRAIN? How many students in total?

22 MR. BELLANTONI: There is, approximately, between the  
23 Brooklyn campus and the New York City campus, maybe 60  
24 students, your Honor. Of those 60 I know 35 have pendency but  
25 in this case obviously we are only talking about these five

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1 students -- four students.

2 THE COURT: OK, but I guess I'm going to reask my  
3 question, sir, because it sounds like what you are saying is  
4 that the determination as to whether to file a TRO or not is  
5 not made dependent on the particular student on whose behalf  
6 you are litigating but just how close your client is to  
7 insolvency. Is that why my Rodriguez case, which is another  
8 iBRAIN case I have before me, does not have a TRO but this case  
9 does, because you have a payroll today?

10 MR. BELLANTONI: Well, first, your Honor, I represent  
11 the parents, not the school.

12 THE COURT: Well, sometimes I wonder, sir. But OK, go  
13 on. Go on.

14 MR. BELLANTONI: I bring this on behalf of the parents  
15 because if the school closes, the students can't go to their  
16 educational placement and with these three students this  
17 tuition is owed, it has been owed for six months now. In two  
18 weeks we go into the second half of the year where there would  
19 be pendency payments due for the second half of the year and it  
20 is not like these are contested, your Honor. And I did not  
21 bring the TRO back when I filed the case because whether it was  
22 these students or others, their placements were not in danger  
23 at the time I filed the complaint. Now we are moving to the  
24 situation where the students could be displaced because this  
25 payment that the DOE conceded over the summer they owed and

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1 would make, has still not been made.

2 THE COURT: Sir, when you say the placement is in  
3 jeopardy, I don't understand you to be saying that these  
4 particular students, there is a letter saying, you know,  
5 Ms. Grullon, your child must go; Ms. Hidalgo, your child must  
6 go; Mr. Donohue, Ms. de Paulino, your children must go. What  
7 you are saying is the placement is on the verge of being lost  
8 because the entire school is on the verge of shutting down. Am  
9 I understanding that correctly? Or is there in fact a specific  
10 determination or decision being made to require these students  
11 to leave? That's what I did not understand.

12 MR. BELLANTONI: There has not been a selective  
13 decision to say to these clients because the DOE hasn't paid  
14 pendency you have to go. It is the latter or the -- I don't  
15 know first or second, it is more, your Honor, now that because  
16 the pendency is still outstanding, the school may not be able  
17 to provide the services that it was directed to provide or that  
18 it -- I say directed, that it prevailed at the last  
19 administrative hearing, iBRAIN was found to be the current  
20 educational placement for these students pending the new school  
21 year and the new IEPs that were filed, the new due process  
22 complaint, but this is their last agreed upon, by  
23 administrative order, educational placement, and indeed if this  
24 pendency isn't paid as the DOE said it would make these  
25 payments, there may not be a school or services for the

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1 children to return to.

2 THE COURT: Mr. Bellantoni, I am going to return to  
3 you in a few moments, sir, because I do want to discuss Mendez  
4 with you and what it means and what I am not sure it means.

5 Mr. Vyas, I would like to turn to you, sir. Don't  
6 worry, I have harsh questions for both sides here on this  
7 Friday afternoon and I do want to understand why DOE has not  
8 made payments since August, especially given not merely this  
9 case and the many other cases that are being filed in this  
10 district about this issue, but given the now 20-year litigation  
11 before Judge Preska regarding DOE's dilatory conduct in making  
12 the payments it needs to under IDEA.

13 So, why have you not made the payments, sir? And by  
14 you I mean your client.

15 MR. VYAS: Your Honor, it is my understanding that  
16 payments are being made periodically including for these  
17 students just based on a view of the documents that plaintiffs  
18 filed in this matter. It seems that at least part of the  
19 payments owed to the pendency of the students have been made.  
20 It is also my understanding from the declaration filed by  
21 Ms. Sapna Kapoor in another matter that since July 5 of this  
22 year, until today, the DOE has paid over \$6 million to the  
23 school.

24 The DOE acknowledges its obligations under the -- it  
25 recognizes these pendencies and it is continuing to pay off the



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1 amounts according to its practices, your Honor.

2 THE COURT: Well, let's please talk about those  
3 practices a little bit more please, sir, because I think what  
4 Mr. Bellantoni believes -- and I'm not sure I do believe  
5 this -- is that your client, DOE, at the moment pendency is  
6 conceded or acknowledged by your client, has to fund  
7 everything. Now, I'm not willing to go there but you just said  
8 they're continuing to pay off amounts. What is the protocol  
9 that DOE uses to pay for pendency placement while the due  
10 process complaint process goes on? Are you paying it monthly?  
11 I just want to understand what -- I assume you are not paying  
12 it all a hundred percent or we wouldn't have this case. What  
13 are you paying? On what formula?

14 MR. VYAS: Your Honor, I am not aware of that formula.  
15 I am new to the office and to the matter. Your Honor, may I be  
16 allowed to refer this question to Mr. Lindeman who is present?

17 THE COURT: Of course.

18 MR. VYAS: Thank you.

19 MR. LINDEMAN: Your Honor, this is Thomas Lindeman.  
20 Apologies for just jumping in here.

21 THE COURT: No, no. I want someone who can answer the  
22 question. If it is you, sir, please answer the question.

23 MR. LINDEMAN: Sure.

24 The way -- there are two separate questions here, I  
25 think. They're related questions but the questions are how

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1 does -- and Mr. Bellantoni has stated that the iBRAIN school is  
2 on the verge of financial ruin although I question that, I  
3 don't necessarily believe it.

4           The way that the Department of Education makes those  
5 payments, we receive the agreements that the parents sign as  
6 well as the usually an affidavit from someone at the school  
7 stating what the tuition is, what the related service is, the  
8 tuition fees pay for, what those amounts are, what the totals  
9 are, then it pays in installment plans throughout the year  
10 usually, I believe, for every single matter that we have paid  
11 out through this year those payments are from the first day of  
12 school and the first day of pendency, which is July 5, through  
13 12/31, so it is the end of this calendar year. That  
14 \$6.1 million/6.2 million amount that Mr. Bellantoni referenced  
15 is explicitly payments made to cover that period. Once the new  
16 years rolls over, more payments will come due. For most of  
17 these kids there is about \$250,000 to \$280,000 in total  
18 payments due over the course of the school year but those are  
19 due in two parts, when a final order comes in and order or  
20 later an TRO decision, or sometimes even a decision from the  
21 district, when the pendency obligation ends and then we are  
22 guided by the FOP.

23           For the other elements that we are discussing here --  
24 nursing, transportation -- the documentation is sometimes a  
25 little bit different; a lot of hearing officers and state

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1 review officers have found that we need additional documents  
2 and it is the DOE's policy to seek additional documentation  
3 when possible, because when we are talking about amounts of  
4 money this large, \$600,000 to \$800,000 per student, tens  
5 of millions of dollars every year, when all of that is being  
6 paid through pendency the taxpayers aren't ever going to get  
7 any of that money back. The goal here is, of course, to make  
8 sure that all of these students have placements and they are  
9 receiving services but also to make sure all of our Is are  
10 dotted and our Ts are crossed. So a lot of things are being  
11 made, more payments will be made. It is not clear to me that  
12 right now that there is any risk to plaintiffs while those  
13 administrative processes are gone through, but that is  
14 accounting work more than it is people work.

15 THE COURT: Mr. Lindeman, just a few follow-up  
16 questions, please, sir. Thank you very much.

17 Mr. Lindeman, you have seen the complaint in this case  
18 and the four students to which it refers?

19 MR. LINDEMAN: I have, your Honor.

20 THE COURT: Thank you.

21 And sir, do I understand correctly that at least as a  
22 consequence of the litigation before Judge Clarke, DOE concedes  
23 that the pendency placement for each of these students, CB, LS,  
24 SJD, and RP, is iBRAIN?

25 MR. LINDEMAN: Yes, your Honor. Those determinations

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1 were reached at the administrative level but they were at issue  
2 in the case in front of Judge Clarke. We met a few times.  
3 There were two other students, maybe three other students  
4 involved in that matter as well --

5 THE COURT: Yes.

6 MR. LINDEMAN: -- those students, I believe, are in  
7 the other matter in front of you now, the de Jesus Rodriguez  
8 case.

9 THE COURT: Yes.

10 MR. LINDEMAN: But all have pendency at iBRAIN, they  
11 are at iBRAIN, they are receiving their education there, they  
12 are receiving transportation to and from the school as they  
13 need it, and I believe for the students who nursing is part of  
14 their pendency, they are also receiving that.

15 THE COURT: Mr. Lindeman, are you in a position to  
16 tell me today that with respect to the actual, what I will call  
17 tuition payments or service payments to iBRAIN, that for each  
18 of the four students before me now payments have been made  
19 equivalent to what is owed from the first day of pendency  
20 through December 31st of 2023?

21 MR. LINDEMAN: Your Honor, I'm not. I can say that  
22 some amount has been paid but I am not completely sure on all  
23 of the details of that in this case. Obviously we were served  
24 late last week, you know, assigned in the middle of this week  
25 when it became clear that a temporary restraining order was

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1 going to be issued but, unfortunately for me personally, I  
2 spent a part of this day with Mr. Bellantoni in the Eastern  
3 District arguing about a different set of students, all of whom  
4 have received payments. So I am sure that payments are being  
5 reviewed and processed for these students and I know some money  
6 has been paid but I don't have all of those details today.

7 THE COURT: Would you know, sir, by Monday, end of  
8 day, what has been paid? Why I ask, sir, is your colleague  
9 Mr. Vyas made a very impassioned argument, and then you stepped  
10 in, about the fact that payments -- he actually said payments  
11 have been made, payments are made periodically, including on  
12 behalf of these students. And then from you, sir, I learned  
13 about the installment plan, the first being the first day of  
14 pendency through December 31st. I understood from the  
15 certainty with which you made that statement that you were  
16 suggesting that payments have been made for these students. So  
17 I appreciate you now telling me that you have not been able to  
18 confirm that and, sir, I do appreciate that you are getting a  
19 lot of cases thrown at you at once and are trying to get a lot  
20 of data at once, but if you are making an argument to me that I  
21 don't have to order any payments because you all are making  
22 those payments, I need to know what you have actually paid.  
23 And so, when can I know how much you paid?

24 MR. LINDEMAN: Your Honor, we can certainly put in the  
25 effort to get that information and provide it to the Court.

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1 With respect to that, though, our argument isn't necessarily  
2 that you don't need to make that argument that payments aren't  
3 being made, payments are being made and they will continue to  
4 be made. But plaintiffs aren't seeking a TRO because, you  
5 know, they think that payments won't be made ever. They are  
6 seeking a TRO because they believe some payments have not been  
7 made now and as far as their burden to receive a TRO or  
8 preliminary injunction, they haven't met it. So I am going --  
9 we will keep working with our clients, Mr. Vyas will keep  
10 working. We have either filed papers or made appearances in  
11 now five or six of these this week alone. Most of these  
12 students have received payment or are receiving payments.  
13 Sometimes it takes a few days from process by the Department of  
14 Education to appearing in an iBRAIN bank account, which  
15 obviously adds to -- the simple, the moving of money adds to  
16 the confusion here sometimes. But, these will all be done. By  
17 Monday, maybe by Tuesday I'm sure we can provide an update on  
18 when all of these can reasonably be expected, or in the case of  
19 students who are still seeking documentation from what  
20 documentation we still need, if that would be helpful.

21 THE COURT: It would be helpful and I would appreciate  
22 that and I just want to make sure I want to recite that back to  
23 you so we both have the same understanding.

24 With respect to the four students at issue in this  
25 case, it is your belief that by Monday, at latest Tuesday, you

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1 will be able to provide me an outline of what has been paid on  
2 their behalf, what remains to be paid on their behalf, and what  
3 is the status of the payments to, for example, transportation  
4 entities or nursing services, whether and to what extent those  
5 have been paid as well.

6 Do I understand that direct correctly, sir?

7 MR. LINDEMAN: Yes, your Honor.

8 THE COURT: OK. I understand that. Mr. Lindeman you  
9 were making a legal argument and I didn't know whether you were  
10 going to continue doing that or Mr. Vyas was going to continue  
11 doing that. May I understand, recognizing that you have had  
12 this for about a day, what your opposition is to the current  
13 motion for a temporary restraining order?

14 MR. LINDEMAN: I will hand it back to my colleague,  
15 your Honor.

16 THE COURT: Yes, sir.

17 Mr. Vyas I will hear you now

18 MR. VYAS: Your Honor, first, I apologize. When I  
19 said that payments are being made I was relying on the  
20 submissions by plaintiffs' counsel and at least for one student  
21 they have stated that all tuition has been paid and that is  
22 student RP in this case here. And, your Honor, as to the  
23 arguments I reiterate that the DOE concedes that, and has  
24 always maintained that the students have pendency at iBRAIN,  
25 that it is obligated to pay for the tuition, nursing, and

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1 transport as has been ordered under the underlying  
2 administrative orders. And with respect to the matter here,  
3 the issue of payments does not create that emergency that  
4 crosses the threshold of Mendez. I was told by Mr. Lindeman  
5 that Judge Hall said this afternoon that the plaintiffs have  
6 not here provided sufficient proof or any proof of, evidence of  
7 the dire financial situations of these non-parties to cross the  
8 threshold of the preliminary injunction requirement to grant  
9 plaintiffs the order they seek here.

10 So, those are my arguments, your Honor, and plaintiffs  
11 rely on these two letters sent to the students, they both name  
12 a student that is not a party to this litigation, it is  
13 somebody named Sebastian, they were both drafted on the same  
14 date, and then they rely on this Munich letter or declaration  
15 that Ms. Kapoor's declaration states contains inaccuracies,  
16 mathematical as well as about whether payments have in fact  
17 been made or are outstanding. It is my understanding that this  
18 office -- my office has reached out to both Mr. Mielnik and the  
19 CPA upon whose information he relied for documentary evidence  
20 and proof to sort of audit and cross-check those claims but  
21 that information has not been forthcoming.

22 And so, your Honor, our position is that this is not  
23 an emergency. Several judges have taken or have found the  
24 same. For instance, I was, on Tuesday, I was in Judge Ramos'  
25 courtroom with Mr. Imbiano and Judge Ramos also reached the



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1 same conclusion which is that the DOE acknowledges the pendency  
2 placement of these students, acknowledges its obligation to  
3 issue payments as ordered under the administrative orders and  
4 has been performing, according to its ordinary payment  
5 procedures, which I concede I do not know what they are.

6 Mr. Lindeman has a better understanding and I will develop that  
7 in due course, your Honor.

8 THE COURT: Yes, by which you mean over this weekend  
9 sir, yes? OK.

10 Mr. Vyas, you mentioned Ms. Kapoor's letter. Am I  
11 correct that is not actually filed on the docket of any case  
12 anywhere, that is something that is being submitted in  
13 connection with either the other cases before other judges or  
14 do I have this document too?

15 MR. VYAS: You do not, your Honor, not in this case.

16 THE COURT: OK, so it is tough for me to agree or  
17 disagree with your characterizations of the letter not having  
18 seen it. I appreciate what you are saying. And so, again, let  
19 me understand, Mr. Vyas, if you are willing to share with me,  
20 how you conceive of Mendez. I imagine you are focusing on the  
21 part of Mendez -- and it was said at the beginning -- that the  
22 stay put provision does not entitle plaintiffs to an automatic  
23 injunction directing funding in the absence of a showing that a  
24 delay or a failure to pay has threatened their child's  
25 placement. How do you interpret that language in Mendez, sir?

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1 Do you interpret that from the perspective of the student  
2 losing a place as distinguished from the perspective of the  
3 school losing its abilities to operate or something else?

4 MR. VYAS: Your Honor, it is the individual student,  
5 it is to be taken on a case-by-case basis. whether this  
6 particular student is going to lose his, her, or their  
7 placement at that school.

8 THE COURT: OK, but Mr. Vyas, taking Mr. Bellantoni's  
9 argument, he says if you all don't abide by your obligations  
10 under IDEA, the whole school is going to close and none of  
11 these four students, and indeed none of the 60 students on the  
12 two campuses is going to be able to have their placement.

13 What is your reaction to that argument, please, sir?

14 MR. VYAS: Your Honor, the DOE has been making  
15 payments as both I and Mr. Lindeman presented to the Court.  
16 Since July 5th the DOE has paid over \$6 million, provided it  
17 was \$6 million to iBRAIN, the school, and only -- and your  
18 Honor, I again apologize to the Court, but I have only had time  
19 to briefly review plaintiffs' counsel's submissions and looking  
20 at the figures there the DOE has also been providing payments  
21 towards nursing and transportation. So, it is following  
22 through on its obligations, perhaps not at the pace and as  
23 quickly as iBRAIN wants.

24 THE COURT: All right. Well, you are understanding,  
25 sir, that at the moment -- and by the way, I haven't concluded

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1 this hearing so who knows I might grant the TRO and then you  
2 will see what you owe -- but I do want to make sure I  
3 understand your point, which I think I do now, which is that  
4 you are contesting the accuracy of the factual statements that  
5 have been made to me by iBRAIN regarding the funds that have  
6 been received from DOE and regarding the financial status of  
7 the school, and this would be there is a declaration, it is  
8 Mr. Mielnik, and you are disagreeing with the substance of that  
9 declaration; correct, sir?

10 MR. VYAS: Yes, your Honor.

11 THE COURT: All right. I am not saying I agree with  
12 you, sir, but I do understand it.

13 Mr. Bellantoni, returning to you please, sir.

14 Mr. Bellantoni, I guess I would like to understand, and I hate  
15 on a Friday afternoon to start getting into hypotheticals so I  
16 will try hard not to, but let's just say, sir, as I give you a  
17 hypothetical, that DOE had completely paid up what it had owed  
18 under every IHO decision or every agreement they had made and  
19 it still wasn't enough to cover iBRAIN's operating expenses.  
20 Would they be required to pay more simply because otherwise the  
21 school would close?

22 MR. BELLANTONI: No. No, absolutely not, your Honor.  
23 The money that the plaintiffs are seeking here has been ordered  
24 already by administrative law judges as a result of prevailing  
25 in the last agreed upon placement. That is, either the DOE

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1 didn't appeal or we didn't appeal. We are not asking for money  
2 as we go, we are asking for the money that we are owed. As far  
3 as payment goes, part of the problem is that the DOE does not  
4 have a set process. If they were paying monthly, then I  
5 wouldn't be here. There was no pendency paid for the students,  
6 for my clients that are entitled to pendency from July 5 until  
7 we started bringing the TRO actions in November. The judges  
8 that we have appeared before -- Judge Ramos and Judge Hall, who  
9 have not granted the TRO -- it just so happens by the time we  
10 got in to court tuition had been paid on those cases. This is  
11 one of the few where, as we come in to court to which it is  
12 still outstanding and there is a placement that is in jeopardy,  
13 whether it be -- and, Judge, I'm not sure it makes a difference  
14 if a single student gets a letter saying because you haven't  
15 paid we are going to kick you out -- I could see the DOE  
16 claiming that that would be contrived -- versus because this  
17 tuition hasn't been paid. And when I pay this tuition, in the  
18 memo of law the amounts that are outstanding reflect half of  
19 the year. There is tuition that is due in January but I  
20 haven't sought that because that's not ripe yet, that's the  
21 second half of the school year. And, clearly, Mendez told  
22 me -- and I litigated Mendez -- that I can't ask for this  
23 pendency prospectively. In other words, even though it can't  
24 be paid prospectively, to ask for the rest the school year when  
25 the students may get decisions in their favor, which would stop

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1 pendency versus losing and if there is an appeal it doesn't.

2 So these amounts are half of the tuition for the  
3 extended school year which goes from July all the way around  
4 again until June. These students who have had a brain injury  
5 require an extended school year so this is a 12-month year.

6 One of these students, RP, was paid, to date. That's  
7 not for the year, that's to date. Counsel was, I think,  
8 discussing whether there have been partial payments, partial to  
9 the extent that one student's tuition has been paid, the other  
10 three have not, nor have partial payments been made towards the  
11 other three tuitions for the first half of the school year.

12 THE COURT: Mr. Bellantoni, is it your view that DOE  
13 owes to iBRAIN all payments through and including December 31,  
14 2023?

15 MR. BELLANTONI: For these three students right now,  
16 yes, your Honor, because that is -- that is how I -- the DOE  
17 has typically paid tuition. I guess there may have been a  
18 point in time where they paid three months and three months.

19 THE COURT: Yes.

20 MR. BELLANTONI: They typically pay six months. I  
21 know it would be better for everybody if they did it monthly,  
22 although I don't know that they can do that logistically, but  
23 there have been no payments for the first half of the school  
24 year, which ends in two weeks, for these students. And that's  
25 what pendency is, it is supposed to allow them to maintain

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1 their placement. I know in Mendez the Second Circuit said that  
2 there is a certain amount of leeway that has to be given to the  
3 DOE and we can't upset their regular process. The problem,  
4 your Honor, is there is no regular process. I have one or two  
5 students who maybe got full tuition at the beginning of this  
6 process mid-November; other students we are still waiting for.  
7 It seems like these actions have to be commenced in order to  
8 get the pendency that the students require.

9 As I said before, we were in front of Judge Clarke on  
10 these cases. I mean, I believe Mr. Panteloni gave a  
11 declaration in mid-August saying that pendency at iBRAIN for  
12 all of these students and they were processing payment. But  
13 three, four, five months later, still no payment. And to think  
14 that there is not going to be repercussions for the school or a  
15 transportation provider, or a nursing provider who get paid  
16 based on the free appropriate public education when these  
17 students win, the DOE must fund these placements. And the  
18 students won these cases. We re not talking about a wait list,  
19 your Honor. We are not talking about asking for a blank check.  
20 The administrative judges -- they're not judges but the  
21 administrative officers, have made their rulings. We provided  
22 documentation many times -- we, as the attorneys for the  
23 parents, provide documentation that the school or the nursing  
24 provider or the transportation provider provided already to the  
25 DOE. In the case of Judge Ramos' case, the documentation they

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1 said they needed it, we provided in August, August 3rd. And  
2 they requested it again in September, October, up until  
3 payments were made in November.

4 So there is no reason why we wouldn't or the schools  
5 wouldn't work with the DOE if they want their payment and I  
6 don't want my students kicked out of these programs. Of course  
7 we work with the DOE. But then we reach a point like now where  
8 we are \$488,000 in tuition is no small thing, and none of that  
9 has been paid, and when I say none of that I mean partially for  
10 the students. The one student, RP, has been paid in full. The  
11 other student, LS, in addition to the pendency, she won her  
12 underlying epilepsy for the school year. The DOE was ordered  
13 to fund the entire school year. I'm not even asking for that  
14 here yet. There is a cause of action in the complaint but all  
15 I am seeking right now is the pendency for the first half of  
16 the school year.

17 THE COURT: Mr. Bellantoni -- Mr. Bellantoni -- number  
18 one, you have to slow down. Number two, you have to not yell  
19 because you are coming very loud through. And also, please  
20 don't use the student's name, sir. She is LS to us. She is LS  
21 and she will always be LS to us.

22 Mr. Bellantoni, thank you very much.

23 MR. BELLANTONI: Apologies, Judge.

24 THE COURT: Yes. I know. You are passionate man,  
25 sir, but don't be messing up with the confidentiality that

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1 adheres to your student's identification.

2 Mr. Vyas, returning to you. Mr. Vyas, I am going to  
3 give you the hypothetical now. Let's say Mr. Bellantoni is  
4 right, you look at your records and RP is paid in full and the  
5 other three are not paid at all. Are you going to make efforts  
6 really promptly to start paying those and how quickly can that  
7 be accomplished?

8 MR. VYAS: Your Honor, we will make prompt efforts to  
9 pay those and I will have a conversation with DOE and send them  
10 an e-mail before I leave the office today.

11 THE COURT: OK. Let's do this, because I don't want  
12 people just to waste anyone's time. I want to look at my  
13 calendar so please excuse me while I do that. Tuesday, at  
14 2:00 p.m., we are going to resume this hearing. Tuesday is  
15 December 19th, 2:00 p.m. is 2:00 p.m. By then I will have  
16 clarity because defendant's counsel will have given me a  
17 detailed recitation of what has and has not been paid on behalf  
18 of these students and we will go from there. So I will take a  
19 letter at any -- well, I would like the letter by 12 noon on  
20 that Tuesday but certainly I welcome it even earlier, but I am  
21 assuming that you guys will be spending some part of today and  
22 some part of this weekend a whole lot of Monday getting that  
23 information to me.

24 All right. We are going to continue this on Tuesday  
25 because this is too important not to. I will leave it at that.



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1           Mr. Bellantoni, is there anything you need to tell me  
2 today or can we resume on Tuesday?

3           MR. BELLANTONI: Tuesday is fine, your Honor. Are we  
4 going to be in person or telephonically?

5           THE COURT: The parties will tell me in their letter  
6 that I am going to get at noon. I can do either, I can do  
7 either. If it is easier for you guys to do it telephonically,  
8 we will do it telephonically.

9           Mr. Bellantoni, is that easier for you, sir?

10          MR. BELLANTONI: Yes, Judge. I would do either but  
11 yes, Judge, that is easier.

12          THE COURT: Fine, phone it is.

13          Mr. Vyas, by Tuesday you are going to be really  
14 studied on this stuff. All right, sir?

15          MR. VYAS: Yes, your Honor.

16          THE COURT: OK. Go forth, everyone. Have great  
17 weekend but spend a lot of that weekend thinking about me and  
18 my case. And Mr. Vyas, I'm going to ask you to obtain a copy  
19 of the transcript of this proceeding in the ordinary course.

20          MR. VYAS: Yes, your Honor.

21          THE COURT: All right. Thank you all very much.  
22 Happy holidays. See you Tuesday by phone.

23          We are adjourned.

24                           o0o